

CITY OF ALAMEDA ORDINANCE No. ³⁰¹⁷_____

New Series

ADDING A NEW SECTION 30-5.15 TO THE ALAMEDA MUNICIPAL
CODE TO PROHIBIT THE OPERATION OF MEDICAL MARIJUANA
DISPENSARIES IN THE CITY OF ALAMEDA

BE IT ORDAINED by the City Council of the City of Alameda:

Section 1. Section 30-5.15 is hereby added to the Alameda Municipal
Code to read as follows:

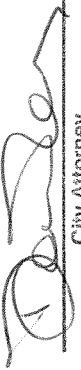
Section 30-5.15. Medical Marijuana Dispensaries

a. Findings.

In enacting this Section, the City Council finds as follows:

1. In 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States.
2. In 1996, the voters of the State of California approved Proposition 215, also known as the Compassionate Use Act of 1996 (the Act), codified at Cal. Health & Safety Code (H&S) Sec. 11362.5 et seq.
3. The Act creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.
4. On January 1, 2004, S.B. 420 went into effect. S.B. 420, known as the "Medical Marijuana Program" (MMP) (codified at Cal. H&S Code Secs. 11362.7-11362.83) was enacted by the state Legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with S.B. 420.
5. The Act expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes." Cal. H&S Code Sec. 11362.5.

Approved as to Form


City Attorney

6. The City Council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. According to these communities, and according to news stories widely reported, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries. The City of Alameda reasonably could anticipate experiencing similar adverse impacts and effects.
7. The City Council further takes legislative notice of a California Police Chiefs Association compilation of police reports, news stories and statistical research setting forth the adverse secondary impacts associated with medical marijuana dispensaries. http://www.californiapolicechiefs.org/nav_files/marijuana_files/Research.html.
8. The City Council further takes legislative notice that as of July 2009, at least 29 cities and two counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The City Council further takes legislative notice that as of July 2009, at least 111 cities and seven counties in California have adopted permanent prohibitions against medical marijuana dispensaries.
9. The City Council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal under the CSA; that the federal courts have recognized that despite California's Act and MMP, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, (2005) 545 U.S. 1; *United States v. Oakland Cannabis Buyers' Cooperative*, (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers' Cooperative*, (2001) 532 U.S. 483); and that the federal government properly may enforce the CSA despite the Act and MMP. (*Gonzales v. Raich*, (2005) 545 U.S. 1).
10. While the City Council in no manner intends or undertakes by the adoption of this ordinance to enforce federal law, the City Council is concerned about interfering with federal law enforcement efforts.

11. The City Council further takes legislative notice that concerns about non-medical marijuana use arising in connection with the Act and the MMP also have been recognized by state and federal courts. See, e.g., *Bearman v. California Medical Bd.*, (2009) 176 Cal.App.4th 1588; *People ex rel. Lungren v. Peron*, (1997) 59 Cal.App.4th 1383, 1386-1387; *Gonzales v. Raich*, (2005) 545 U.S. 1, 32 n. 43.
12. Allowing medical marijuana dispensaries, and issuing permits, business licenses or other applicable licenses or entitlements providing for the establishment and/or operation of medical marijuana dispensaries poses a threat to the public health, safety and welfare.
13. An ordinance prohibiting medical marijuana dispensaries, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana dispensaries, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Alameda.
14. The City Council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the State's medical marijuana laws, entitled "*GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE* (August 2008)." (http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaaguidelines.pdf.) The Attorney General has stated in the guidelines that "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law."
15. The City Council further takes legislative notice that in *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, the Court held that neither the Act nor the MMP preempts cities from adopting land use regulations for medical marijuana dispensaries.
16. The City Council further takes legislative notice that the Act anticipates local regulations at Cal. H&S Code Sec. 11362.5(b)(2): "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes."

b. Definitions.

As used in this ordinance, the following terms shall be ascribed the following meanings:

1. "Medical Marijuana" means "marijuana" as that term is defined and used in the Act and the MMP, to wit, Cal. H&S Code Secs. 11362.5-11362.83.
2. "Medical marijuana dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is provided, sold, made available, or otherwise distributed to one or more of the following: a primary caregiver, a qualified patient or a person with an identification card.
3. A Medical Marijuana Dispensary shall not include the following uses, so long as such uses comply with this code, Cal. H&S Code Secs. 11362.5, 11362.7 et seq., as amended, and other applicable laws:
 - a) A clinic licensed pursuant to Chapter 1 (commencing with Sec. 1200) of Division 2 of the Cal. H&S Code, as amended.
 - b) A health care facility licensed pursuant to Chapter 2 (commencing with Sec. 1250) of Division 2 of the Cal. H&S Code, as amended.
 - c) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Sec. 1568.01) of Division 2 of the Cal. H&S Code, as amended.
 - d) A residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Sec. 1569) of Division 2 of the Cal. H&S Code, as amended.
 - e) A hospice or a home health agency, licensed pursuant to Chapter 8 (commencing with Sec. 1725) of Division 2 of the Cal. H&S Code, as amended.
4. "Person with an Identification Card" shall have the meaning given that term by Cal. H&S Code Sec. 11362.7, as amended.
5. "Primary Caregiver" shall have the meaning given that term by Cal. H&S Code Sec. 11362.7, as amended.
6. "Qualified Patient" shall have the meaning given that term by Cal. H&S Code Sec. 11362.7, as amended.

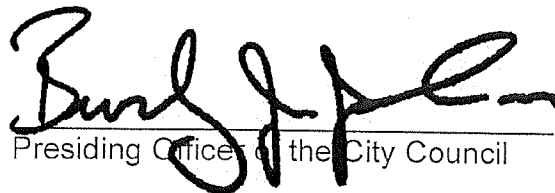
c. Operation of Medical Marijuana Dispensaries Prohibited.

Medical marijuana dispensaries are prohibited in the City of Alameda. No person or entity shall operate or permit to be operated a Medical Marijuana Dispensary in or upon any premises in the city. The City shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a medical marijuana dispensary

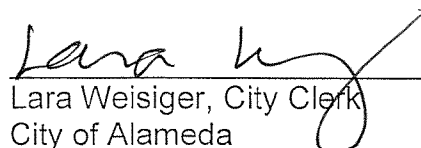
Section 2. Severability Clause. It is the declared intent of the City Council of Alameda that if any section, subsection, sentence, clause, phrase, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provision of this ordinance.

Section 3. This ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Section 4. CEQA. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Secs.15060 (c)(2) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060 (c)(3) the activity is not a project as defined in Sec.15378 of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated studies. This ordinance also is exempt from CEQA pursuant to the "common sense" exemption under Sec.15061(b)(3) of the CEQA Guidelines, because the City Council hereby determines and finds that there is no possibility that the ordinance may have a significant effect on the environment.


Presiding Officer of the City Council

Attest:


Lara Weisiger, City Clerk
City of Alameda

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a special meeting assembled on the 18th day of May, 2010 by the following vote to wit:

AYES: Councilmembers deHaan, Gilmore, Matarrese, Tam,
and Mayor Johnson – 5.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 19th day of May, 2010.

A handwritten signature in cursive script, appearing to read "Lara Weisiger", is written over a horizontal line.

Lara Weisiger, City Clerk
City of Alameda